Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

JEANNA DODD and DAVID LAIME,

Petitioners,

v.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, consistent with the Fourth Amendment, a person's invocation of Fourth Amendment rights and his refusal to consent to a search may be used as a factor in determination whether there is reasonable suspicion to detain or probable cause to search.

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CITATION TO OPINION BELOW

The decision of the Arkansas Supreme Court is reported as *Laime and Dodd v. State*, 347 Ark. 142, 60 S.W.3d 464 (2001). The opinion was issued on December 6, 2001, and overruled a decision of the Arkansas Court of Appeals in favor of petitioners, reported as *Laime and Dodd v. State*, 73 Ark. App. 377, 43 S.W.3d 216 (2001).

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The opinion of the Supreme Court of Arkansas was issued on December 6, 2001. The mandate of the Supreme Court of Arkansas has been stayed to permit Dodd and Laime to petition for certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Constitutional Provisions

Fourth Amendment, United States Constitution:

> *The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

STATEMENT OF THE CASE

On July 28, 1998, in a rural part of Saline County, Arkansas, State Trooper Jeff Ramsey stopped a van driven by petitioner David Laime and in which the van's owner, petitioner Jeanna Dodd, was a passenger. The van had a Texas license plate. According to Ramsey's testimony and affidavit, the reasons for the stop were that the van had impeded the flow of traffic and that a check on the Texas vehicle tag revealed that it was not on file in Texas.

Upon pulling the van over, Ramsey made contact with Laime and obtained his identification and insurance. After running checks on the requested documents, Ramsey returned to the van and asked Laime to come back to the patrol unit so he could talk to him. At this time, Laime began questioning why he was stopped and he presented to Ramsey the registration, which showed that the van had been properly registered with the state of Texas earlier that day. Despite learning that the vehicle was in fact properly registered, Ramsey took time to fill out a warning ticket citing Laime for it. (After Laime had signed the warning ticket and received a copy, Ramsey added the offense of impeding the flow of traffic to the original copy of the warning.)

Before giving back Laime's warning ticket, identification and other paperwork, Ramsey asked for consent for a search of the van, and began to prepare a consent form. However, Laime repeatedly told Ramsey that he would not consent to a search of the vehicle and that Ramsey was violating his constitutional rights. Laime was told to at this point to "just listen," and Ramsey again attempted read the form and began filling in the date. Again, Laime stated that he was not going to consent to a search of his vehicle and that his

constitutional rights were being violated. The Arkansas Supreme Court credited testimony that Laime was agitated and hostile during his invocation of rights. Ramsey returned to the van to speak with Dodd. Ramsey claimed that Dodd's answers to his questions had contradicted Laime's. On direct testimony he claimed that those contradictory answers were part of his decision to detain for the dog sniff. However, on cross-examination he admitted that he had made the decision to detain and sniff before he ever talked with Dodd. The trial court made no factfindings, merely denying the motion, as is permissible under Arkansas law. The Arkansas Supreme Court purported to accept some of Ramsey's testimony and apparently disregarded some of his admissions on cross examination. Although the issue is merely tangential to the petition for certiorari, Dodd and Laime do argue that the factfindings, insofar as they disregard admissions by the trooper, are unreasonable.

After speaking with Dodd, Ramsey told Laime and Dodd that they could leave, but the vehicle was not leaving until a drug sniff was conducted. Ramsey called for back up, and began running his drug dog around the vehicle. The dog allegedly alerted on the side of the van. Ramsey then opened the passenger side of the vehicle and discovered a small amount of green/brown vegetable matter in the carpet, and what he surmised was a marijuana seed. He then opened a case that contained alleged drug paraphernalia.

Although Ramsey said he told Dodd and Laime that they were free to leave, they asserted, and the courts agreed, that because of the unavailability of their transportation and the remoteness of their location, i.e. on the shoulder of a rural interstate highway, they were detained within the meaning of the Fourth Amendment.

Two safes were discovered and removed from the van so that a dog sniff could be conducted on them. The dog allegedly alerted on both safes. While putting the safes back into the van so a search warrant could be sought, the smaller of the two safes fell and broke open. Nothing was found in the smaller safe. A search warrant was obtained for the safes, and the second safe was opened revealing LSD and other paraphernalia.

The search warrant for the safes signed by the issuing magistrate, a municipal judge, specifically found that the "refusual (*sic*) of both persons to open the safe's (*sic*) give rise to only suspect that they also contain items that are seizalble (*sic*) related to the drug trafficking industry." The Arkansas Supreme Court declined to reach the issue of invocation of rights as it pertained to the warrant because of its holding that a warrantless search of the safes could have been conducted.

Both Laime and Dodd were charged with various drug offenses. They filed motions to suppress evidence, alleging that the stop, detention and search violated their rights under the Fourth Amendment and equivalent state constitutional and rule-based guarantees.

The trial court denied the motion to suppress. Laime and Dodd then entered conditional pleas of guilty. Laime was sentenced to ten (10) years in the Arkansas Department of Correction. Dodd was sentenced to four months in jail and eight (8) years probation.

The Arkansas Court of Appeals, in a 5 to 1 decision, reversed the trial court and found that the Ramsey's detention of the petitioners, after learning that the vehicle tag was

valid, was unconstitutional. *Laime and Dodd v. State*, 73 Ark. App. 377, 43 S.W.3d 216 (2001). The State filed a petition for review, and the Arkansas Supreme Court, in a 4-3 decision, reversed the Court of Appeals. *Laime and Dodd v. State*, 347 Ark. 142 , 60 S.W.3d 464 (2001). The four justice majority held that the stop was legal, that there were sufficient grounds for detention for the dog sniff, and that defects in the search warrant were irrelevant because the search of the safes could have been conducted without the warrant. The decision of the Arkansas Supreme Court, from which certiorari review is sought, essentially held that the invocation of rights and refusal to consent may be considered as a factor in the totality of the circumstances.

The Fourth Amendment issues were raised in a timely fashion at all stages in this litigation. Both the Arkansas Court of Appeals and Arkansas Supreme Court decisions dealt with this matter, *inter alia*, as a Fourth Amendment issue. There was no assertion of default by the State nor finding of default by the Arkansas courts. The decisions of those courts are in the appendix to this petition, and they repeatedly refer to the Fourth Amendment issue.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI IN ORDER TO HOLD THAT A PERSON'S INVOCATION OF RIGHTS UNDER THE FOURTH AMENDMENT AND REFUSAL TO CONSENT TO A SEARCH MAY NOT BE CONSIDERED IN DETERMINING WHETHER THERE IS REASONABLE SUSPICION TO DETAIN OR PROBABLE CAUSE TO SEARCH.

In the case of the petitioners Jeanna Dodd and David Laime, a bare majority of the Arkansas Supreme Court held that it was permissible for the police to consider a suspect's invocation of rights and refusal to consent to search in determining whether there is reasonable suspicion to detain in order to conduct a search. *Laime and Dodd v. State*, 347 Ark. 142, 60 S.W.3d 464 (2001). Certiorari should be granted so that this Court may explicitly consider whether the invocation of Fourth Amendment rights and refusal to consent may be properly considered as part of the totality of the circumstances justifying a detention or search. Petitioners argue that it should not be so considered.

The detention of Dodd and Laime — based on a "totality of the circumstances" in which the invocation of rights and refusal to consent was a part — led to a "dog sniff" that located some marijuana and drug paraphernalia and two locked safes in the vehicle. The police then obtained a search warrant for the safes. Some 1500 units of LSD were found in one of the safes.

With regard to the detention leading to the "dog sniff," the Arkansas Supreme Court concluded that the totality of the circumstances of Laime's "ever increasing agitation," his alleged untruth about a prior drug conviction and Dodd and

Laime's "ignorance of their destination and the names of their friends" justified the detention and validated the fruits of the ensuing search. *Id.*, 347 Ark. at 158, 60 S.W.3d at 475.

The Arkansas Supreme Court's majority discussed the invocation of rights issue in this way:

> In holding as we do, we emphasize that Laime's invocation of his Fourth Amendment rights cannot be the sole basis for probable cause to search. *See Florida v. Bostick*, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) (a suspect's assertion of his constitutional rights cannot be the sole basis for probable cause to search); *Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) (post-*Miranda* warnings silence cannot be used to impeach a defendant's credibility); *United States v. Hyppolite*, 65 F.3d 1151 (8th Cir.1995) (refusal to consent to search cannot be sole basis for probable cause to search apartment). That principle is fundamental, and our jurisprudence is clear. The legitimate assertion of one's constitutional rights is not a weapon to be used against a criminal suspect.

347 Ark. at 158, 60 S.W.3d at 475

Strictly speaking, the court majority was silent on whether exercise of rights could be reasonable suspicion — as opposed to probable cause — but the context of the opinion is such that the court appears to have used the terms interchangeably. On the issue of invocation of rights, the

majority's faulty analysis is further discernible by reference to the dissent of two of the three dissenting justices:

> The majority states Laime's invocation of his right against unlawful search and seizure cannot be the sole basis for probable cause to search, and then states the assertion of one's constitutional rights is not a weapon to be used against a suspect. What is stated is not clear and implies invoking one's constitutional rights is a fact that weighs in favor of reasonable suspicion.

347 Ark. at 162, 60 S.W.3d at 477

Thus, it is clear that Arkansas has held that invocation of rights and refusal of consent legitimately can be part of the consideration of reasonable suspicion. Dodd and Laime argue that this holding contradicts a fundamental principle of modern constitutional jurisprudence that a person cannot be penalized for the exercise of a constitutional right. For example:

- In *Doyle v. Ohio*, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976), this Court held that *Miranda* warnings carry an implicit assurance that silence will not be used against the suspect.

- In *Wainwright v. Greenfield*, 474 U.S. 284, 106 S. Ct. 634, 88 L. Ed. 2d 623 (1986), this Court held that post-*Miranda* silence could not be used as evidence of sanity.

- Within the Fourth Amendment context, in *Simmons v. United States*, 390 U.S. 377, 88 S. Ct. 967,

> 19 L. Ed. 2d 1247 (1968), this Court held testimony given by defendant to meet standing requirements in a Fourth Amendment claim is not admissible against him at trial on question of guilt or innocence.

In *Florida v. Bostick*, *supra*, which the Arkansas majority cited, this Court held:

> We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure. See *Delgado*, *supra*, 466 U.S., at 216- 217, 104 S.Ct., at 1762-1763; *Royer*, 460 U.S., at 498, 103 S.Ct., at 1324 (plurality opinion); *Brown v. Texas*, 443 U.S. 47, 52-53, 99 S.Ct. 2637, 2641-2642 [1]

501 U.S. at 437, 111 S. Ct. at 2387

The Arkansas Supreme Court appears to have relied heavily on the fact that Laime supposedly went from "inquisitiveness to anger to combativeness" in exercising his Fourth Amendment rights. However, the court did not assert that Laime had committed an expression-related criminal offense — disorderly conduct, for instance — but rather relied on the fact that Laime was strident in the exercise of his rights. If this holding is to stand, the protections afforded by the Fourth Amendment would have an inverse relationship to the enthusiasm with which one invokes them. A demeanor

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1. *I.N.S v. Delgado*, 466 U.S. 210, 104 S. Ct. 1758, 80 L. Ed. 2d 247 (1984). *Florida v. Royer*, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). *Brown v. Texas*, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979).

requirement would be engrafted onto the Fourth Amendment with no basis in the text or case law.

There is nothing in the Arkansas court's opinion to indicate that Laime's expression was not speech protected under the First Amendment. *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992). Any obnoxiousness by Laime that the officer felt, and which the Arkansas court credited, was not on some issue unrelated to the detention and search. It was merely a vociferous objection to the detention and search.

Moreover, the Arkansas court's interpretation of the record to find the other factors permitting the detention and search was unreasonable. On direct examination the officer said that he had relied in part on what he called the contradictory answers given by Laime and Dodd, but on cross-examination admitted that he had made the decision to detain and search before he talked to Dodd.

> Q (Defense counsel Rosenzweig) Okay. So in your subsequent — so you had already made the decision to do the search of the van and already seized the van before you talked to Ms. Dodd?
>
> A (Trooper Ramsey) I think so, because I didn't know who she was.
>
> Q Okay. And so nothing that Ms. Dodd said to you had any effect on your initial decision to seize the van, because you hadn't talked with her; isn't that right?
>
> A That's true.

Q Okay. So you're not relying on anything Ms. Dodd said to you as your probable cause to conduct the dog search of the van, are you? Cause you haven't talked to Ms. Dodd?

A No.

Q Okay.

A Not at that point.

Q And the decision had already been made, I'm going to run this dog; is that right?

A Somewhere in there it was —

Q You were going to do it. The van wasn't going anywhere and your customary practice if you couldn't get a consent was to run a dog search or dog test or dog operation?

A That's a good summary of it.

Q So there's nothing Ms. Dodd could of said to you at that point, since you'd already made the decision, that would of changed your mind?

A Well, I don't know.

Q Well, she didn't change your mind?

A No, sir.

> Q Okay. But you had specifically and in the affidavit that you propounded to Judge Rickard it was, I made the decision to search. I seized. You said the van wasn't going anywhere, then you talked with Ms. Dodd.
>
> A I don't think I told him that at that particular time. I told him to hang on just a second and let me go talk to your passenger just a second. When I went and talked to her I asked for her identification. I believe she give me the Texas driver's license.

(R 296-297)

Despite this unqualified admission, the Arkansas Supreme Court considered the allegedly contradictory statements made by Dodd as part of the justification for the detention, although it was established that those statements were not made until *after* the decision to detain and search. However, even if this Court were to decline to disturb the Arkansas court's refusal to rely on the officer's admissions on cross-examination, relief should still be granted since it is obvious that the Arkansas court considered the improper factor of the exercise of rights in its analysis of the totality of the circumstances.

Certiorari should be granted so that this Court can define the circumstances, if any, in which a person's exercise of Fourth Amendment rights may be considered in determining whether there is reasonable suspicion for detention or probable cause for search.

CONCLUSION

Dodd and Laime pray that, for the reasons propounded in this petition, this Court grant certiorari, and upon plenary briefing and argument, reverse the decision of the Arkansas Supreme Court and remand the matter for reconsideration.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE SUPREME COURT OF ARKANSAS DATED DECEMBER 6, 2001

SUPREME COURT OF ARKANSAS
No. CR 01-559

DAVID LAIME & JEANNA DODD,

APPELLANTS,

VS.

STATE OF ARKANSAS,

APPELLEE,

Opinion Delivered DEC 06 2001

APPEAL FROM THE SALINE COUNTY
CIRCUIT COURT,
NO. CR 98-391-1,
HON. GRISHAM A. PHILLIPS, JR., JUDGE,

AFFIRMED.

COURT OF APPEALS

REVERSED.

ROBERT L. BROWN, Associate Justice

The appellants in this case, David Laime and Jeanna Dodd, appeal from an order denying their motion to suppress drug evidence and statements. They raise seven points on appeal: (1) the state trooper lacked probable cause to make

the initial stop of their vehicle; (2) the state trooper had no reasonable suspicion to detain them after proof of the vehicle's registration was provided; (3) invocation of one's constitutional rights cannot be grounds for probable cause; (4) the affidavit for search warrant omitted facts regarding the drug dog's reliability which caused a *Franks v. Delaware* violation; (5) the drug dog's "alert" on the vehicle did not constitute probable cause to search; (6) the search warrant was objectively unreasonable in stating that an invocation of constitutional rights provided probable cause; and (7) there was no proper basis for a nighttime search. We affirm the circuit judge's order denying the motion to suppress and reverse the decision by our court of appeals. *See Laime v. State*, 73 Ark. App. 377, 43 S.W.3d 216 (2001).

The facts given in this case are taken from Arkansas State Trooper David Ramsey's affidavit supporting the search warrant and probable cause for arrest as well as his testimony at the suppression hearing. We note initially that the affidavit and the testimony vary in certain important respects, which we will note in this opinion. At approximately 5:45 p.m. on July 28, 1998, Trooper Ramsey was patrolling Interstate 30 between Benton and Little Rock in a marked patrol unit. He observed a green 1986 Dodge van in the left-hand lane. The van was in the process of slowly passing two tractor-trailer trucks. Although the van was driving in the left lane of a double-lane stretch of I-30 with a 70 mile-per-hour speed limit, it was traveling at a speed of approximately 60 miles per hour. Two cars separated the trooper's patrol car from the van.

Appendix A

Trooper Ramsey believed that the van was hindering traffic and that the driver of the van was driving in violation of Arkansas's left-lane law. *See* Ark. Code Ann. § 27-51-301(b) (Supp. 2001). When the van cleared the trucks, it pulled into the right-hand lane. According to the trooper's testimony, although the van was no longer in violation of any traffic law, he decided to pursue the left-lane violation. He pulled his patrol car behind the van and noted its Texas license plate number. He called the license plate number in to a state police operator to determine the validity of its registration, and the result of the call was that the van was not registered in Texas.

At this point, Trooper Ramsey pulled the van over to the side of the interstate to investigate its lack of registration. The trooper approached the driver of the van, David Laime, and requested to see his driver's license. Laime produced a Virginia identification card in his name. Trooper Ramsey asked Laime if he had a driver's license; he also asked whether the van belonged to Laime in light of the fact that its plates were from Texas and Laime's identification was from Virginia. Laime replied that the van did not belong to him but belonged to a friend and that he was driving to Little Rock to meet several people who were giving him a ride to Washington, D.C. Laime then referred to his passenger, who was later identified as Jeanna Dodd, and told the trooper that his passenger was planning to drive the van back to Texas after she dropped Laime off in Little Rock. Laime also told the trooper that he and Dodd were planning to meet some friends at a Little Rock restaurant for dinner at 6:00 p.m., and that it was these people who were then going to take him to Washington, D.C. At some point during this interchange, Laime produced a Virginia driver's license.

Trooper Ramsey next asked about the van's registration and insurance. Laime offered the trooper proof of insurance, but the proof showed that the vehicle insured was a Subaru, not a Dodge van. After receiving this information, Trooper Ramsey returned to his patrol car and ran the Texas license plate number through the law enforcement database a second time. Again, he received information that the van was not registered in Texas. According to his affidavit for probable cause, at this time he requested a criminal history search on Laime. According to his affidavit for a search warrant and subsequent testimony, the request occurred later. The trooper returned to the van and asked Laime to accompany him to his patrol car to answer some questions. Laime agreed. Laime then offered Trooper Ramsey the registration documents for the van. These documents showed that the van was registered to Jeanna Dodd in Houston, Texas. At that point, Trooper Ramsey still did not know that Jeanna Dodd was the name of Laime's passenger. The registration had been issued that very day at approximately 12:30 p.m., in Houston, Texas. Trooper Ramsey testified at the suppression hearing that because of this information, his suspicions about the van's registration were dispelled. He wrote Laime a warning ticket for "license not on file." After the warning ticket, he ran the criminal history check on Laime, according to his affidavit for a search warrant. Hours later, back at the Bryant police station, he added an additional warning on the ticket for "impeding the flow of traffic."

During the interchange in the patrol car after Laime had submitted the van's valid registration, Laime asked several times why he was being stopped and detained. Trooper Ramsey testified at the suppression hearing that he tried to

answer Laime's questions, but that "before I could get a chance to answer it he'd done fired up about four more." Laime told the trooper that he needed to get to Little Rock as soon as possible because his friends would not wait for him to arrive. He added that if he did not meet the friends for dinner, they would leave him and he would miss his ride to Washington, D.C. Trooper Ramsey asked Laime the names of his friends and at which restaurant he was meeting the friends. Laime responded that he could not remember either, but that his passenger knew. Laime then told Trooper Ramsey that his passenger was his sister. According to Trooper Ramsey's testimony on cross-examination at the suppression hearing, his suspicions were aroused solely on the basis of the above-stated facts, and he had at this point made up his mind to search the van. The trooper made no comparable statement in his affidavits or on direct examination.

Trooper Ramsey next testified at the suppression hearing that he asked Laime to remain in the patrol car while he checked with his passenger in the van about the dinner arrangements. Whether this conversation ever took place is a matter of factual dispute in this case. In reviewing Trooper Ramsey's two affidavits (one for the search warrant and the second for probable cause to arrest), no mention is made of this conversation. At that time, Dodd told the trooper that she and Laime were driving up from Texas to meet some friends, and that these friends were going to give him a ride to Washington, D.C. She told Ramsey that she and Laime were planning on meeting the friends for dinner and then she was taking the van back to Texas. She confirmed Laime's statement that she was his sister. However, she could not remember the name of the restaurant where they were to meet

their friends or the names of the friends, but she said that Laime knew. According to Trooper Ramsey's testimony at the suppression hearing, he did not yet know Dodd's name even after this exchange.

Trooper Ramsey testified that now he was suspicious of Laime and Dodd because their stories were vague and were "kind of falling apart." He added that he was concerned because neither of the subjects could remember the name of the restaurant at which they were planning to meet the friends or the friends' names, but each said the other knew those names. The trooper said he was also concerned because they were driving a van that belonged to a friend.

The trooper returned to his patrol car, where Laime was still seated. It was then that he ran a criminal history check on Laime, according to his testimony at the suppression hearing. The results showed that Laime had a drug arrest in Florida and a drug charge in Virginia.[1] The trooper next asked Laime if he had "ever been arrested before." Laime replied that he had had a speeding ticket or some kind of traffic offense several years ago but that he could not remember what it was for. Trooper Ramsey next asked Laime: "You're not one of them guys . . . carrying dope down the highway or anything . . . ?" The trooper also asked Laime if he had any "guns or dead bodies or stuff" in the van. Laime grew

1. As to when Trooper Ramsey got Laime's criminal history, the record is unclear. His affidavit for probable cause says the radio operator called back after the trooper asked Laime about his arrest record. The affidavit for search warrant does not state whether Trooper Ramsey had the criminal history before or after he questioned Laime about his record.

increasingly irritated during this exchange and repeatedly asserted that he needed to get back on the road to meet his friends. Trooper Ramsey described Laime's behavior as irate, "bad combative," and hostile, and noted that he was gesturing wildly and that his body language suggested that he was angry.

Because of this, the trooper called for backup. After this call, Trooper Ramsey asked Laime if he could search the vehicle.[2] Laime vigorously objected to this. The trooper described what happened next at the suppression hearing:

> He starts in that I was beginning to violate his constitutional rights. That he's a law student and he knows right from wrong and that I was detaining him from getting to Little Rock by 6:00. By now I had the consent to search form out and I asked him did he know what this was. He said, "You're not going to look." I said, "Well, just let me explain this thing a minute." I started filling out the top part and he said, "You're not going to look." I tried to read the top part up there and fill

2. The precise chronology of events is a matter of factual dispute in this case. According to his testimony on direct examination at the suppression hearing, it was at this point that Trooper Ramsey decided to search the van—*after* he had spoken with Dodd. However, in the affidavit that Trooper Ramsey wrote for the search warrant, the affidavit for probable cause, and his cross-examination, he makes no mention of Dodd in connection with his decision to search. Trooper Ramsey testified at the hearing that his memory was better at the times that he wrote the two affidavits than it was at the suppression hearing. On cross-examination, he admitted that he decided to search the van much earlier, before he ever spoke to Dodd.

in the dates and times and things like that on there. He's just telling me I'm not going to look.

After this exchange, Laime's demeanor deteriorated further, according to the trooper. He repeated: "You're violating my constitutional rights and I demand you let me go." Laime repeated that he was a law student and threatened civil litigation.

Trooper Ramsey went back to the van to talk to Dodd about getting her consent to search the van. He asked Dodd for identification. At this point, according to his testimony, he learned her name for the first time. He asked her why she had stated that the van belonged to a friend when it was registered in her name. He also asked her if she would consent to a search of the van, to which she replied that she did not have time for a search because of the dinner engagement. She denied having any contraband in the van. Trooper Ramsey further noted at the suppression hearing that Dodd was eating potato chips during this conversation, which he believed was inconsistent with her contention that she was on her way to a Little Rock restaurant for dinner.

Trooper Ramsey returned to the patrol car, where Laime was still sitting, and told Laime that he wanted to run his drug dog, Moose, around the van.[3] At this point, Laime "went ballistic," according to Trooper Ramsey. He insisted that he either be arrested or be released, and the trooper responded that Laime was not under arrest and was free to go. Laime immediately got out of the patrol car and

3. The drug dog apparently had been in the patrol car the entire time.

hurriedly walked toward the van. Before Laime could reach the van, Trooper Ramsey stopped him and informed him that while he was free to go, he could not take the van with him because he planned on running the drug dog around it. Trooper Ramsey recalled his specific words: "Y'all are free to leave. You can go. You can walk. You can run. You can crawl, just get out of here." However, the trooper would not let them within 20 feet of the van for fear that the drug dog would bite them. This entire time, according to the trooper, Laime was repeatedly and boisterously asserting his constitutional rights, telling the trooper that he had no right to detain them, and that "this is America."

Three troopers then arrived as backup. At that time, Trooper Ramsey began running the drug dog, Moose, around the van. He testified at the suppression hearing that Moose was trained to respond to marijuana, cocaine, heroin, and methamphetamine. Moose "alerted" on the van four times, indicating the presence of illegal drugs. Trooper Ramsey informed Laime that Moose's behavior showed there were illegal drugs in the van, and that the troopers were going to search the van. One of the newly-arrived troopers escorted Laime to a patrol car and held him there while the other troopers searched the contents of the van.

During this search, the troopers found a small loose amount of brownish-green vegetable matter that they suspected was marijuana in the bottom of a pouch on the back of the driver's seat. The state crime laboratory later weighed the amount as .1 gram. They also found a marijuana seed in the pocket of the driver's side door. At this point, the troopers arrested Dodd and Laime for possession of a controlled substance.

Appendix A

The search of the van continued, and the troopers found a shotgun case containing about twenty blown glass pipes or bongs. Trooper Ramsey noted that they were new and still had price tags on them. The bongs did not appear to have been used to smoke marijuana. The troopers also found two locked safes, a large one and a small one. They pulled these safes out of the van and onto the side of the road. After Dodd refused to open the safes, Trooper Ramsey had the drug dog react to the safes. Moose alerted on both safes.

The troopers decided to place the safes back in the van and obtain a search warrant for them. During the course of placing the smaller safe into the van, the safe slipped accidentally and broke open on the road. Despite the drug dog's previous alert on the broken safe, there was nothing in the safe.

The troopers took Dodd and Laime to the Bryant police station and had the van towed there. Trooper Ramsey swore out an affidavit for a search warrant for the second safe in the van and took it to the Bryant municipal judge's home. The judge signed the search warrant, and it was executed shortly before midnight that night on the safe in the van at the Bryant police station.

When the troopers searched the safe, they found several sheets of paper which were perforated. The sheets of paper contained a large number of doses of LSD, as indicated by a field chemical test the troopers performed on the paper. The troopers also found a film canister which contained what they believed to be cocaine residue and a leather pouch which contained a few marijuana seeds. The troopers further found some glass pipes containing marijuana residue.

Appendix A

On August 6, 1998, Laime and Dodd were charged by criminal information with the offenses of possession of LSD with intent to deliver, possession of drug paraphernalia, possession of cocaine, and possession of marijuana. They subsequently moved to suppress the physical evidence seized during the roadside search and the search of the safe which occurred at the Bryant police station. The motion also included a request for suppression of any statements made by them during the course of their contact with the state troopers. An amended criminal information eliminated the cocaine charge but added that Laime had a prior criminal conviction for illegal drug possession and was subject to enhanced sentencing under Ark. Code Ann. § 5-64-408 (Repl. 1997).

On May 5, 1999, the circuit judge held a hearing on the motion to suppress. The judge heard testimony from Trooper Ramsey and Trooper James Kelloms. On February 2, 2000, the circuit judge entered an order denying the motion to suppress. Laime and Dodd then entered conditional pleas of guilty, reserving their right to appeal the non-suppression order under Ark. R. Crim. P. 24.3(b). Laime was sentenced to ten years in prison. Dodd was sentenced to four months in prison and eight years probation.

I. Standard of Review

Laime and Dodd argue multiple grounds for reversal, as previously set out in this opinion. In most respects, their points for reversal overlap. We begin by noting the standard of review, which is critical to this case. In reviewing a ruling denying a defendant's motion to suppress, we make an

independent determination based on the totality of the circumstances and view the evidence in the light most favorable to the State. We reverse only if the trial court's ruling is clearly against the preponderance of the evidence. *Burris v. State*, 330 Ark. 66, 954 S.W.2d 209 (1997); *Wofford v. State*, 330 Ark. 8, 952 S.W.2d 646 (1997). When we grant a petition to review a decision of the court of appeals, we treat the matter as if the appeal had been originally filed in this court. *Thompson v. State*, 333 Ark. 92, 966 S.W.2d 901 (1998); *Frette v. City of Springdale*, 331 Ark. 103, 959 S.W.2d 734 (1998). This court defers to the trial court in assessing witness credibility. *E.g.*, *Rankin v. State*, 338 Ark. 723, 1 S.W.3d 14 (1999); *Wright v. State*, 335 Ark. 395, 983 S.W.2d 397 (1998); *Tabor v. State*, 333 Ark. 429, 971 S.W.2d 227 (1998).

II. Traffic Stop

For their first point, Laime and Dodd contend that Trooper Ramsey did not have probable cause to make the initial stop of the van. They assert that the left-lane law, Ark. Code. Ann. § 27-51-301(b) (Supp. 2001), which they were allegedly violating, is unconstitutionally vague and that Trooper Ramsey only stopped their van as a pretext to search it. The State counters that under the standard established by this court in *Travis v. State*, 331 Ark. 7, 959 S.W.2d 32 (1998), Trooper Ramsey had more than sufficient probable cause to make the traffic stop.

We need not reach Laime's and Dodd's pretextual argument or their vagueness argument regarding § 27-51-301(b), because we conclude that the trooper's information

about lack of a valid Texas registration for the van gave him probable cause to make a valid stop. It is true that in order for a police officer to make a traffic stop, he must have probable cause to believe that the vehicle has violated a traffic law. *Travis v. State*, *supra.* Probable cause is defined as facts or circumstances within a police officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected. *Burris v. State*, *supra; Hudson v. State*, 316 Ark. 360, 872 S.W.2d 68 (1994). In assessing the existence of probable cause, our review is liberal rather than strict. *Brunson v. State*, 327 Ark. 567, 940 S.W.2d 440 (1997). Whether a police officer has probable cause to make a traffic stop does not depend on whether the driver was actually guilty of the violation which the officer believed to have occurred. *Travis v. State*, *supra. See also Barrientos v. State*, 72 Ark. App. 376, 39 S.W.3d 17 (2001).

In *Travis v. State*, *supra*, we held that what appeared to be illegality regarding a license plate without expiration tags gave a police officer probable cause to stop that vehicle and investigate the circumstances. This was so even though a Texas license plate was involved, and Texas had no requirement that expiration tags be on the license plate. Our holding in *Travis* comports with our other cases involving license plates and probable cause to stop. *See, e.g.*, *Burris v. State*, *supra*, (holding that probable cause to stop existed when trailer's license plate was illegally fastened and was flapping in the wind and taillight cover was broken); *Wilburn v. State*, 317 Ark. 73, 876 S.W.2d 555 (1994) (holding that a police officer had probable cause to stop a motorist when he discovered that the vehicle bore a

license plate which was issued to a different car in violation of state law). *See also Wimbley v. State*, 68 Ark. App. 56, 3 S.W.3d 709 (1999) (holding that a police officer had probable cause to stop a truck which had no license plate in violation of state law).

We hold that the circuit judge did not err in finding that the traffic stop was valid.

III. Reasonable Suspicion

We turn next to Laime's and Dodd's claim that Trooper Ramsey lacked grounds to detain them after they presented proof that the van was validly registered in Texas.

Our rule which provides when a detention without an arrest may transpire reads as follows:

> A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is

> reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

Ark. R. Crim. P. 3.1.[4] The rule is precise in stating that the reasonable suspicion must be tied to commission of a felony or a misdemeanor involving forcible injury to persons or property.

Our criminal rules also define "reasonable suspicion" as "a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion." Ark. R. Crim. P. 2.1. This court has further said that "[w]hether there is reasonable suspicion depends on whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating that the person may be involved in criminal activity." *Smith v. State*, 343 Ark. 552, 570, 39 S.W.3d 739, 750 (2001) (citing *Hill v. State*, 275 Ark. 71, 628 S.W.2d 284 (1982)). *See also* Ark. Code Ann. § 16-81-202 (1987).

In this same vein, the General Assembly has passed legislation listing the factors to be considered in determining if a police officer has grounds to reasonably suspect:

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4. The length of time of the detention is not raised as an issue in this appeal. Rather, the issue raised is whether Trooper Ramsey had grounds to detain Laime and Dodd at all.

Appendix A

(1) The demeanor of the suspect;

(2) The gait and manner of the suspect;

(3) Any knowledge the officer may have of the suspect's background or character;

(4) Whether the suspect is carrying anything, and what he is carrying;

(5) The manner in which the suspect is dressed, including bulges in clothing, when considered in light of all of the other factors;

(6) The time of the day or night the suspect is observed;

(7) Any overheard conversation of the suspect;

(8) The particular streets and areas involved;

(9) Any information received from third persons, whether they are known or unknown;

(10) Whether the suspect is consorting with others whose conduct is "reasonably suspect";

(11) The suspect's proximity to known criminal conduct;

(12) Incidence of crime in the immediate neighborhood;

(13) The suspect's apparent effort to conceal an article;

(14) Apparent effort of the suspect to avoid identification or confrontation by the police.

Ark. Code Ann. § 16-81-203 (1987). This court has stated that § 16-81-203 is merely illustrative, and not exhaustive, of the types of factors that may be considered in forming reasonable suspicion. *See Potter v. State*, 342 Ark. 621, 30 S.W.3d 701 (2000); *Muhammad v. State*, 337 Ark. 291, 988 S.W.2d 17 (1999). As is the case with Rule 3.1, the reasonable suspicion under state statutes must be coupled to the fact that the suspect is involved in some felonious activity. *See* Ark. Code Ann. § 16-81-204 (1987). Specifically, § 16-81-204(a) refers to a reasonable suspicion that the person "is committing, has committed, or is about to commit a felony."

The genesis for both the criminal rule and state statute is *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the United States Supreme Court held that a police officer could detain a person without violating the Fourth Amendment if that officer had a reasonable suspicion that "criminal activity may be afoot." *Terry*, 392 U.S. at 30. Both Ark. R. Crim. P. 3.1 and § 16-81-204 are more specific in stating that the detention must be associated with suspected felonious activity or, in the case of Rule 3.1, either a felony or a misdemeanor involving forcible injury.

In the case at hand, the State sets forth five factors which, it asserts, gave Trooper Ramsey reasonable suspicion that criminal activity was underway or imminent:

> (1) Laime's irritated, hostile, demanding, and combative demeanor, which includes his refusal to consent to a search and his invocation of his constitutional rights;
>
> (2) The fact that both Laime and Dodd told Ramsey they were meeting people in Little Rock for dinner, but neither of them was able to name the restaurant or their dinner companions;
>
> (3) Laime's assertion that the van was borrowed from a friend, but the van had actually been registered to Dodd earlier that day;
>
> (4) The fact that Ramsey asked Laime if he had ever been arrested, and although Laime disclosed only a traffic violation, he had been previously arrested on drug charges;
>
> (5) Dodd's consumption of potato chips, which was inconsistent with her assertion that she and Laime were on their way to Little Rock to eat dinner.

We begin by noting that the focal point for our analysis must be the time when Trooper Ramsey decided that the registration of the van was valid because at that point the reason for the stop had vanished. This court has held with

respect to the issue of whether probable cause to arrest exists that (1) after-acquired knowledge is irrelevant to the probable cause analysis, and (2) only what the police officer knew at the time of arrest enters the analysis. *Friend v. State*, 315 Ark. 143, 865 S.W.2d 275 (1993) (citing *Beck v. Ohio*, 379 U.S. 89 (1964); *Roderick v. State*, 288 Ark. 360, 705 S.W.2d 433 (1986)). The same principle holds true with respect to a decision on whether to detain under Rule 3.1.

At the same time, this court recognizes that as part of a valid traffic stop, a police officer may detain a traffic offender while he completes certain routine tasks. This detention is, of course, unrelated to a Rule 3.1 detention. The Eighth Circuit Court of Appeals has discussed the detention associated with a valid traffic stop succinctly:

> [H]aving made a valid traffic stop, the police officer may detain the offending motorist while the officer completes a number of routine but somewhat time-consuming tasks related to the traffic violation, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning. *See United States v. Carrazco*, 91 F.3d 65, 66 (8th Cir. 1996). During this process, the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle, and he may act on whatever information is volunteered.

U.S. v. $404,905.00 in U.S. Currency, 182 F.3d 643, 647 (8th Cir. 1999). Routine questioning and the criminal history check appear to be precisely what Trooper Ramsey engaged in as part of a valid traffic stop.

Under these circumstances, we consider a criminal background check to have been not only routine but prudent. The van initially appeared to be unregistered; the trooper was given papers on a Subaru, not a Dodge van; the trooper was told that the van was owned by a friend and not by the driver or passenger; and Laime first gave the trooper a Virginia I.D. card and not a driver's license. Most importantly, according to one affidavit, the background check was set in motion *before* the question about the van's registration was resolved.

We conclude that under the totality-of-the-circumstances standard and viewing the evidence in the light most favorable to the State, as we are required to do, reasonable suspicion of criminal activity was legitimately entertained by Trooper Ramsey. The background check first revealed a drug conviction which Laime lied about. The trooper's suspicions were magnified by the couple's ignorance of their destination and the names of their friends as well as Laime's ever-increasing agitation. All of this led to the canine sniff and the positive alert to drugs by the drug dog. We hold that the Fourth Amendment protection afforded Laime and Dodd was not violated in this case, and we affirm the circuit judge on this point.

In holding as we do, we emphasize that Laime's invocation of his Fourth Amendment rights cannot

be the sole basis for probable cause to search. *See Florida v. Bostick*, 501 U.S. 429 (1991) (a suspect's assertion of his constitutional rights cannot be the sole basis for probable cause to search); *Doyle v. Ohio*, 426 U.S. 610 (1976) (post-*Miranda* warnings silence cannot be used to impeach a defendant's credibility); *United States v. Hyppolite*, 65 F.3d 1151 (8th Cir. 1995) (refusal to consent to search cannot be sole basis for probable cause to search apartment). That principle is fundamental, and our jurisprudence is clear. The legitimate assertion of one's constitutional rights is not a weapon to be used against a criminal suspect.

Nor can mere nervousness, standing alone, constitute reasonable suspicion of criminal activity and grounds for detention. We agree with the Eighth Circuit Court of Appeals in this regard. *See United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998). As was stated by the *Beck* court, initial signs of nervousness are commonplace when one is confronted by a law enforcement officer. *Id.* Nevertheless, Laime's conduct is distinguishable. It went from inquisitiveness to anger to combativeness when Trooper Ramsey began to delve into his criminal record and suggested a search of the van. The fact that criminal history and an angry response were involved distinguishes this case from the *Beck* facts. *See United States v. Lebrun*, 261 F.3d 731 (8th Cir. 2001).

As a final point, we discount the eating of snack food as a bonafide factor for reasonable suspicion.

IV. Drug Dog Search

Dodd briefly argues as one of her points that a dog sniff, standing alone, cannot constitute probable cause to search.

Laime and Dodd argue much more extensively that Trooper Ramsey's affidavit supporting the search warrant was inadequate under *Franks v. Delaware*, 438 U.S. 154 (1978). They base their *Franks* argument on the trooper's failure to state in the affidavit that the drug dog, Moose, had already falsely alerted on one safe. They also assert that Trooper Ramsey knew that Moose had been inaccurate at least ten times and possibly as many as fifty times but did not mention this fact in the affidavit.

According to the Eighth Circuit Court of Appeals, a dog sniff that results in an alert on a container, car, or other item, standing alone, gives an officer probable cause to believe that there are drugs within the item, if the dog is reliable. *United States v. Sundby*, 186 F.3d 873 (8th Cir. 1999); *United States v. Bloomfield*, 40 F.3d 910 (8th Cir. 1994). *See also Newton v. State*, 73 Ark. App. 285, 43 S.W.3d 170 (2001). In *Sundby*, the Eighth Circuit stated:

> A dog's positive indication alone is enough to establish probable cause for the presence of a controlled substance if the dog is reliable. To establish the dog's reliability, the affidavit need only state the dog has been trained and certified to detect drugs. An affidavit need not give a detailed account of the dog's track record or education.

Sundby, 186 F.3d at 876 (cases omitted). This court has never been confronted with the issue of whether a dog sniff, standing alone, provides probable cause to search.

We need not reach that issue in the instant case because the dog sniff was bolstered by other facts in the trooper's affidavit. Particularly, the search warrant and affidavit referred to Laime's criminal history, his failure to honestly disclose his drug arrest and charge, his refusal to reveal details about the van's ownership, his combative demeanor, and the marijuana and drug paraphernalia that the trooper found before the warrant was obtained.

We turn then to the allegation that Trooper Ramsey committed a *Franks* violation in this case. The *Franks* decision stands for the proposition that if a defendant shows by a preponderance of the evidence that (1) the affiant for a search warrant made a false statement knowingly and intelligently, or with reckless disregard of the truth, and (2) with the affidavit's false material set aside, the affidavit's remaining content is insufficient to establish probable cause, the search warrant should be invalidated. *State v. Rufus*, 338 Ark. 305, 993 S.W.2d 490 (1999) (citing *Pyle v. State*, 314 Ark. 165, 862 S.W.2d 823 (1993)). Matters omitted must be material circumstances which contradict or dispel the incriminating factors in the affidavit and which render what is in the affidavit effectively false because of their nondisclosure. *Biggers v. State*, 317 Ark. 414, 878 S.W.2d 717 (1994) (citing *Pyle*, *supra*).

We need not address this point because we conclude that upon finding marijuana and drug paraphernalia in the van following the drug dog's positive alert, the troopers had reasonable cause to believe that the van contained other things

subject to seizure. Under our criminal rule and case law, a search of the van could commence under these facts without a search warrant. *See* Ark. R. Crim. P. 14.1; *Bohanan v. State*, 324 Ark. 158, 919 S.W.2d 198 (1996). As a result, any asserted defect in the affidavit for a search warrant is of no moment as a warrantless search could have been performed.

We affirm on this point.

V. Nighttime Search

Arkansas Rule of Criminal Procedure 13.2(c) authorizes a nighttime search under the following circumstances:

> Except as hereafter provided, the search warrant shall provide that it be executed between the hours of six a.m. and eight p.m., and within a reasonable time, not to exceed sixty (60) days. Upon a finding by the issuing judicial officer of reasonable cause to believe that:
>
> (i) the place to be searched is difficult of speedy access; or
>
> (ii) the objects to be seized are in danger of imminent removal; or
>
> (iii) the warrant can only be safely or successfully executed at nighttime or under circumstances the occurrence of which is difficult to predict with accuracy;

> the issuing judicial officer may, by appropriate provision in the warrant, authorize its execution at any time, day or night, and within a reasonable time not to exceed sixty (60) days from the date of issuance.

Ark. R. Crim. P. 13.2(c). *See Fouse v. State*, 337 Ark. 13, 989 S.W.2d 146 (1999).

We give the appellants' arguments under this point little credence. The search of the safe took place at the Bryant police station. The policy considerations that led to the adoption of Rule 13.2(c) and nighttime searches of dwellings simply do not pertain to a search of a van at a police station. We affirm on this point as well.

Affirmed.

CORBIN and HANNAH, JJ., dissent.

THORNTON, J., dissents. I dissent on the basis of the analysis provided in the Arkansas Court of Appeals's decision of *Laime v. State*, 73 Ark. App. 377, 43 S.W.3d 216 (2001).

Appendix A

DISSENT

JIM HANNAH, Associate Justice

I am concerned about the erosion of every citizen's right against unlawful search and seizure under both the Arkansas and the United States Constitutions. We may not abdicate our duty to protect the constitution and our citizens by allowing law enforcement officers to engage in unconstitutional conduct simply because as law enforcement officers their hunches often payoff. The analysis under our constitution and under the federal constitution in search and seizure cases should not be reduced to simply determining whether the appellant is suspicious in some broad, undefined context, but rather, whether the facts infer the required proof for the action to be taken, in other words, whether the required proof of reasonable suspicion or probable cause is present.

The majority decides this case by finding reasonable suspicion to justify the continued detention and canine sniff. The majority finds the required reasonable suspicion based upon the following facts:

1. Laime's lie about his criminal background;
2. Dodd's and Laime's ignorance or refusal to state their destination and names of friends they were to meet; and,
3. Laime's increasing agitation.

Other facts are discussed. The majority states Laime's invocation of his right against unlawful search and seizure cannot be the sole basis for probable cause to search,

and then states the assertion of one's constitutional rights is not a weapon to be used against a suspect. What is stated is not clear and implies invoking one's constitutional rights is a fact that weighs in favor of reasonable suspicion. Other facts are also discussed. The majority wisely ignores Ramsey's assertion that reasonable suspicion may be based upon when someone chooses to eat snack foods. However, we ought to take special note of Ramsey's assertion about the snack foods, for it shows us ever more clearly his intent in this matter. Ramsey had a hunch, and it was a correct hunch. His intent was to stop the van and search it. Once Ramsey stopped the van, he attempted to develop facts to justify his detention of Laime and the search of the van.

In summary, the facts show Laime declined to divulge details of the trip, of his criminal past, and that he was nervous. Nothing about these facts has any tendency in fact to show there was any contraband in the van. The facts might infer Laime was nervous and felt he would only make things worse by divulging information, especially information about his past. They could infer Laime was frightened. Nervousness and agitation could mean any number of things. I don't believe these facts under any reasonable analysis can be argued to be "specific, particularized and articulable reasons indicating the person or vehicle may be involved in prohibited criminal activity." *Potter v. State*, 342 Ark. 621, 627, 30 S.W.3d 701 (2000). This is the required inference. The facts support no such conclusion nor any conclusion even close to reasonable suspicion.

The facts relied upon in this case do infer something. They infer something about Ramsey's conduct. We cannot

ignore Ramsey's conduct as it relates to the alleged facts he gives in support of his continued detention of the van after his reason for stopping the van on the basis of a lack of registration was resolved. First, I note it is obvious any purpose in making a lawful stop based on a report from Texas that the van lacked current Texas registration was completed prior to appellants's detention and the execution of the canine sniff. This is clearly so because Ramsey told Laime and Dodd they were free to go. *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998). Thus, in order to continue to detain appellants, there had to be events that transpired during the traffic stop that gave rise to reasonable suspicion. *Id.* Therefore, the court had to then determine whether Ramsey had a reasonable, articulable suspicion that appellant's van was carrying contraband or that other criminal activity may have been afoot. *Id.* While it is true that Ramsey's subjective intent in the stop will not invalidate the stop if there are other valid reasons for the stop, the facts developed during that stop do not support continued detention. Herein lies the majority's fundamental error in its analysis. The Fourth Amendment to the United States Constitution and Article 2 Section 15 of the Arkansas Constitution will not allow the detention of the appellants on the basis that they were acting suspicious in Ramsey's subjective opinion. When all the pretense and fiction created by Ramsey is stripped away, it is facially apparent that the canine sniff was carried out because Ramsey wanted to search the van. That was his intent from the beginning. Ramsey asserts he stopped the van for impeding traffic flow; however, his own account contradicts that this could have been a valid concern. He states the van was traveling about 60 mph in a 70 mph zone while passing two tractor trailer rigs. He further states that none of the traffic

in the area was moving at 70 mph. So we must ask at this juncture, where was the impediment to traffic? Ramsey notes that two vehicles were behind the subject van. He then asserts the van was holding them up. For authority he cites to Ark. Code Ann. § 27-51-301(b) (Supp. 2001), "driving continuously in the left lane. . . ." Obviously this was not occurring. Ramsey admits the van was passing the trucks. Ramsey, however, called in the license of the van and found it was not listed as registered. This gave him the right to stop the van. However, once that issue was resolved, Ramsey detained them still based on the above noted facts. Testimony by Ramsey is conflicting, and does not support the conclusion that Ramsey had "specific, particularized and articulable reasons indicating the person or vehicle may be involved in prohibited criminal activity." *Potter*, 342 Ark. at 627.

The facts of this case are simple to understand. Ramsey stopped the van because he intended to search it. Ramsey asserts Laime was agitated. It seems so obvious that it need not be argued that an ordinary, reasonable person would rightfully become agitated when, without any cause whatever, he is asked by a law enforcement officer if he is carrying a dead body. Few of us would not be offended by an inference that we are a murderer, and most of us would be offended by baseless assertions that we are carrying drugs. That a person reacts in an expected and normal way to such accusations may not give rise to reasonable suspicion.

Next, the majority ought to consider that Ramsey feigned permission to leave after he completed his "investigatory" stop on Interstate 30. According to Ramsey, they were free to go. They could "walk or crawl," Ramsey told them,

but they could not take their van. Ramsey's conduct showed that appellants were not free to leave. They were not free to leave because Ramsey intended to search the van.

We also ought to consider the request for consent to search. Ramsey's request for consent to a search was not a request. He did not ask if he could search and then move on to other questions relevant to his stop. He relentlessly pressed on. After Laime refused multiple verbal requests, Ramsey got out a consent form even though his requests had been rejected. Ramsey pressed on. Laime still denied the request. Ramsey still did not give up and respect the denial of his request. He began to try to read the form. Still Laime would not submit. Then Ramsey began to fill the form out. To what purpose? It was apparent Ramsey was hoping that by applying relentless pressure, Laime would submit to a search. Surely we have not reduced constitutional protections to only providing protection where the citizen, alone on the side of the road, has the courage to engage in an Olympic test of wills with law enforcement officers sworn to uphold the law and the Constitution. This decision leaves the citizens, who the Constitution is supposed to protect, to fend for themselves and to bear the burden of fighting off unrestrained law enforcement knowing that if they resist, their invocation of their constitutional rights will be interpreted as an admission of guilt. One would hope we have moved beyond the grossly simplistic approach that a citizen will comply and allow a search because if he doesn't he must have something to hide. The Constitution is designed to protect the innocent from unlawful search and seizure. This court bears a duty to protect the Constitution. *Potter*, *supra*. Also, the constitutional guarantee against unlawful search

and seizure must be construed in favor of the individual. *State v. Broadway*, 269 S.W.2d 215, 599 S.W.2d 721 (1980); *Lowery v. United States*, 128 F.2d 477 (8th Cir. 1942).

In the majority's decision, we learn that if someone lies about his criminal background when asked by police, is unable or unwilling to identify his destination and names of friends he is to meet, and seems agitated, that there is reasonable suspicion he is carrying contraband in his vehicle, or that he has committed or is about to commit a crime. There is nothing, taken individually, collectively, or in totality about these facts, that has any tendency to show anything was in the van or that a crime had been or was about to be committed. At most, they show the police officer had a nervous man before him who had a prior drug conviction. Nonetheless, these facts are found by this court to constitute the required "specific, particularized and articulable reasons indicating the person or vehicle may be involved in prohibited criminal activity." *See Potter*, 342 Ark. at 627. The facts provided are so woefully inadequate that a cursory review is all that is needed to show that the continued detention and canine sniff were unlawful. The facts are so amorphous that they mean nothing. The facts must be specific. The word specific means "precisely formulated or restricted, of an exact or particular nature." *The People v. C.T. Thomas*, 25 Cal. 2d 880, 898, 156 P.2d 7 (1945). There is nothing restricted or precise about these facts. Particular means "separate, single, specific, as opposed to general." *State v. Patterson*, 60 Idaho 67, 88 P.2d 493, 497 (1939). No particular facts inferring any criminal activity whatever are offered. Nothing about the facts in totality infers anything other than a nervous man who has a criminal background, which he is understandably

not proud of. More is required of this court than such a mechanical review as is present here. So much time has passed since the decision in *Terry v. Ohio*, 390 U.S. 1 (1968) and similar cases under our own Constitution that discussion of this issue has digressed to lists of factors and facts from prior cases. This is misleading because the decision by the court must be based upon facts of the case that rationally infer a crime has been or is about to be committed. *Beck, supra.* The analysis has digressed to a conclusion of reasonable suspicion where a criminal defendant appears merely suspicious in the opinion of law enforcement. Such conjectural suspicion is not sufficient. *Burris v. State*, 330 Ark. 66, 954 S.W.2d 209 (1997). An "inchoate and unparticularized suspicion or 'hunch' " will not suffice. *Potter*, 342 Ark. at 625-626 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). Nonetheless, in this case we allow a detention and search on a set of specious facts questionably and conflictingly presented by the officer, and cast aside fundamental constitutional rights.

This case should be reduced to its simplest terms so what this court is doing may be clearly understood. The majority finds the detention for the canine sniff was justified because Ramsey had a reasonable suspicion that a crime had been or was about to be committed. His testimony at the hearing varied fundamentally from his affidavit. His conduct shows he stopped the van to search it and everything else was an attempt to justify the detention and search. The facts in this case are abundantly clear. Ramsey saw a vehicle that fit his profile of one that he thought could be carrying drugs. He acted on a hunch. He stopped and search the van on that basis. Such an "inchoate and unparticularized suspicion or

'hunch' " will not suffice to support a search under the Fourth Amendment. *Potter v. State*, 342 Ark. at 625-626 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

For the above reasons I respectfully dissent.

CORBIN, J., joins in this dissent.

APPENDIX B — OPINION OF THE COURT OF APPEALS OF ARKANSAS DIVISIONS IV AND I DATED MAY 2, 2001

COURT OF APPEALS OF ARKANSAS
Divisions IV and I
Opinion delivered May 2, 2001

CA CR 00-382 __ S.W.3d __

David LAIME and Jeanna Dodd

v.

STATE of Arkansas

Appeal from Saline Circuit Court;
Grisham A. Phillips, Jr., Judge; reversed and remanded.

Sam Bird, Judge. David Laime and Jeanna Dodd entered conditional pleas of guilty to charges of possession with intent to deliver a controlled substance and possession of drug paraphernalia in violation of Ark. Code Ann. § § 5-64-401 and 5-64-403 (Supp. 1999). Acting pursuant to Ark. R. Crim. P. 24.3, both reserved the right to appeal the court's denial of their motions to suppress evidence found pursuant to a search of the vehicle that they occupied.

Laime and Dodd have filed separate appeals, which have been consolidated. Although expressed in slightly different terms, Laime and Dodd assert the same four points on appeal, to-wit: (1) that [Arkansas State Police] Trooper Ramsey lacked probable cause to stop the vehicle; (2) that Trooper Ramsey violated their Fourth Amendment rights by continuing to detain them after he had concluded his

investigation for the alleged traffic violation; (3) that omissions of facts in Ramsey's affidavit for search warrant undermined his drug dog's reliability and amounted to a violation of *Franks v. Delaware*, 438 U.S. 154 (1978); and (4) that the search warrant was objectively unreasonable because of its finding that the invocation of Laime and Dodd's constitutional rights provided probable cause, and there was no basis for a nighttime search. Because we agree that Laime and Dodd's Fourth Amendment rights were violated by Trooper Ramsey's detaining them after he had determined that the Texas registration of their van was valid, we hold that the trial court should have granted their motions to suppress the evidence resulting from the search of the van and its contents. Therefore, we reverse and remand.

A detailed recitation of the facts is essential to an understanding of our decision. At the suppression hearing, Trooper Ramsey testified regarding a traffic stop of a van that Laime was driving and in which Dodd was a passenger. Ramsey testified that at approximately 6:00 p.m. on July 28, 1998, while patrolling with his drug dog, Moose, he observed the van pass two tractor-trailer trucks in the far-left lane of I-30 between Benton and Little Rock. Ramsey testified that his attention was drawn to the van because it was traveling about sixty miles per hour in an area where the speed limit for cars was seventy miles per hour. He said that he was following the van in his marked patrol car but that there were two other cars between his car and the van, and that he considered the van to be holding up traffic. Ramsey said that it took the van about a mile and a half to complete its pass of the trucks, that the van then moved into the right-hand lane, and that the two cars ahead of the patrol car

proceeded on past the van. Ramsey said that when his patrol car caught up with the van, he could see that it had a Texas license plate and he could read the tag number. He said that he called Hot Springs to run a check on the van's registration, and that a report came back that there was no registration in Texas for the license plate on the van.

Ramsey said that he stopped the van, approached the driver, and asked to see his driver's license. He said that the driver initially gave him a Virginia identification card issued to David Laime, but that the driver then produced a Virginia driver's license. Ramsey said that, because he wondered why Laime had a Virginia driver's license and was driving a car with Texas tags, he asked Laime if he owned the van. Laime responded that the van belonged to a friend in Texas, that he was headed to Little Rock to meet some friends who were going to take him on to Washington, D.C., and that his passenger was going to drive the van back to Texas. Ramsey then asked to see registration and insurance papers on the van. He was given an insurance document issued to a Jeanna Dodd for a Subaru vehicle, not for the Dodge van that Laime was driving. Ramsey returned to his patrol car to run another check on the Texas license plate and again received a report that there was no registration information on file for that license number.

At that point, Ramsey went back to the van and asked Laime to come to the patrol car because Ramsey had some questions. He said that at the patrol car, Laime handed Ramsey registration papers issued in Texas for the license plate that was on the van. The papers showed that the van was registered to Jeanna Dodd at Fort Sam Houston, Texas.

He said that from "just looking on their computer thing," the registration appeared to have been issued at 12:30 that afternoon.

Ramsey testified that he started explaining to Laime the reason for the stop, but that Laime kept "firing" questions at him and would not give him a chance to explain anything. Laime said that Ramsey knew that he was in a hurry because he was supposed to meet people in Little Rock for supper, but Laime could not remember the name of the restaurant. Ramsey asked Laime who the lady passenger in the van was, and Laime told him that it was his sister. At this point, Ramsey told Laime to remain in the patrol car while he talked to Dodd. Ramsey said that he did not think that he asked what her name was, but that she told him that Laime was her brother. She told Ramsey that Laime was from Washington and she was from Texas, that the van belonged to "some of their kinfolk or friends or whatever it was back in Texas," that she was dropping Laime off in Little Rock, that they were going to have supper with friends who were taking Laime on to Washington, that she could not remember the name of the restaurant or tell him the names of the friends, and that after supper she was returning to Texas.

Ramsey said that he "started putting two and two together" after he talked to Dodd, and that the stories were "kind of falling apart" in the following ways:

> They were going to meet these folks that they didn't know where they was going to meet. They was driving somebody else's van that they didn't

know—she was going to drop him off and she was going to take the van back to Texas. Their stories were just not matching up.

Ramsey said that he decided at that point to run a criminal history check on Laime "to see if they had some kind of violation somewhere down the way." He said he received a report that Laime had "some kind of charge out of Florida, some kind out of maybe Virginia or somewhere up there on the east coast." Ramsey said he asked Laime if he had ever been arrested for anything and Laime responded that he had received a speeding ticket or some kind of a driving offense a couple of years ago, but that he could not remember what it was for. Ramsey stated that, while he was writing the citations, he asked Laime, "You're not one of them guys to be carrying dope down the highway or anything, do you?" Ramsey testified that he felt like Laime was evading the questions and that Laime was becoming hostile, so he called for backup from Troopers Kellum, Cook, and Scarbrough. Ramsey said that while he was waiting on the backup to arrive, he asked Laime if he would give consent for a search of the van and that Laime responded, "No."

Ramsey said that he then pulled out a consent-to-search form and asked Laime if he knew what it was, and Laime said, "You're not going to look." When Ramsey started filling out the top part of the consent-to-search form, Laime repeated, "You're not going to look." When Ramsey tried to read the consent-to-search form to him, Laime again told Ramsey, "You're not going to look." Ramsey stated that Laime's attitude changed from "irate" to "bad combative" when Ramsey tried to read the consent-to-search form.

He said that Laime stated that he was a law student, that he knew his rights, that Ramsey was violating those constitutional rights, and that Laime was going to sue Ramsey.

Ramsey stated that he decided to go back and talk again with the passenger in the van, and that he learned for the first time, from her Texas driver's license, that she was Jeanna Dodd. He said that he questioned her about why she and Laime had told him that the van belonged to someone else when it was registered in her name. Ramsey said that he asked her if he could look through the van, and she responded that it would not be a problem except that they were in a hurry to get to Little Rock so that Laime could make connections with the friends who were taking him to Washington.

Ramsey said that he then returned to the patrol car, where Laime demanded that he be released unless he was under arrest. At that point Ramsey said that he told Laime he was free to go. Ramsey met Laime at the front of the patrol car after they got out of it, and Ramsey said, "[B]efore that van goes anywhere, I'm going to run the dog around it." Ramsey testified that when Laime protested, Ramsey again told him that he was "free to leave. He can walk. He can run. He can crawl. He can do whatever he wants to do. But before the van goes anywhere I am going to run the dog around the van. That's it, cut and dried. That's what's going to happen." Ramsey said that he instructed Laime and Dodd to get out of the van and get back out of the way, and that Ramsey then "put [the dog] to work on the van."

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Ramsey testified that the dog began at the left rear of the van and proceeded around it counter clockwise. He said that Moose "alerted" (a term he explained meant that the dog was indicating "the presence of controlled substance") in the vicinity of the right rear tire where he noticed that a sliding window on the van was open. Ramsey said that after proceeding along the passenger side of the van, Moose alerted at the point where the van's double doors met. They proceeded toward the passenger door, and Moose alerted at the point where the passenger door met the door post. They proceeded around the front of the van and down the driver side to the general vicinity of the left rear tire and one of the windows, where Moose alerted again. According to Ramsey, it was at about this time that the backup troopers arrived, and that he told Laime, "[W]e're going to look in the van" . . . because "my dog's telling me that he smells the odor of drugs in your vehicle, . . . and we're fixing to take a quick look." Ramsey said that because Laime continued to protest the search of his van, one of the other officers took him away and placed him in another patrol unit.

Ramsey described the search that he conducted of the van, resulting in the discovery of "a little bit of green, brown-looking vegetable matter" that he believed to be marijuana in the pouch on the back of the driver seat, and also what he believed to be a marijuana seed in a pouch on the driver-side door. Ramsey said that he then advised Laime and Dodd that they were under arrest for possession of a controlled substance. He went back to the van and found a shotgun case and a pistol box. He opened the pistol box and found it empty. He opened the shotgun case and found about twenty "glass bongs, pipes, things I've seen in my years of law enforcement

used to smoke marijuana through, or hashish or any other drug." He opened the back door of the van and discovered what appeared to be two safes, one about two-feet square with a combination lock "like a key pad that goes on a telephone," and a smaller one about half the size of the first one, with a turn-dial combination lock. He said that he asked Laime and Dodd to open the safes, but they replied that they did not have the combinations. Dodd said that one of the safes might have some money in it, that the combination had been sent somewhere else, and that the safe could not be opened in transport.

Ramsey said that one of the other troopers set the large safe on the ground, and that he went to get Moose to see if he would alert. Moose alerted on both safes. Ramsey then told the other troopers that since they could not open the safes, they needed to put everything back into the van, call for a wrecker to transport it, and "get a search warrant for these safes." Ramsey said that when the troopers opened the door of the van to put the large safe back, the small safe fell out on the ground and "busted open." A visual examination revealed that it was empty.

Ramsey said that while Troopers Scarbrough and Cook waited for the wrecker to come for the van, he and Trooper Kellum separately transported Laime and Dodd to the Bryant Police Department. Thereafter, a nighttime search warrant was obtained for the van and its contents, resulting in the discovery that the larger safe contained LSD and drug paraphernalia.

Appendix B

1) ***Whether Trooper Ramsey lacked probable cause to stop the vehicle***

Laime and Dodd argue that Ramsey misapplied our "left-lane law" in concluding that their van, which was traveling over the minimum posted speed and below the maximum, was continuously obstructing traffic in the left lane. Arkansas Code Annotated section 27-51-301 (Supp. 1999) reads in pertinent part:

> (a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:
>
> > (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing that movement;
>
> . . . .
>
> (b) Motor vehicles shall not be operated continuously in the left lane of a multilane roadway whenever continuous operation in the left lane impedes the flow of other traffic.

The relevant inquiry on appeal is whether the officer had probable cause to believe that the defendant was committing a traffic offense at the time of the initial stop. *Travis v. State*, 331 Ark. 7, 959 S.W.2d 32 (1998); *see Whren v. United States*, 116 S. Ct. 1769 (1996). Probable cause exists when the facts and circumstances within an officer's knowledge are

sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected. *Travis v. State*, *id.* The question of whether the officer had probable cause to make a traffic stop does not depend upon whether the defendant is actually guilty of the violation that was the basis for the stop; all that is required is that the officer had probable cause to believe that a traffic violation had occurred. *Id.* (citing *Burris v. State*, 330 Ark. 66, 71, 954 S.W.2d 209 (1997)). In assessing the existence of probable cause, our review is liberal rather than strict. *Id.* (citing *Brunson v. State*, 327 Ark. 567, 940 S.W.2d 440 (1997)).

Appellants contend that Ramsey's inability to verify the license tag by radio could not have provided probable cause for the stop because he had decided to stop the van before he was able to read the tag. They also contend that the trooper's claim that the van impeded the flow of traffic was unreasonable: they note testimony that Laime used the left-hand lane for passing while maintaining a speed within the maximum and minimum limits; that he moved to the right-hand lane after passing, and that all of this took only about a mile and a half.

We need not address the issue regarding operation of the vehicle in the left lane because there was a separate reason for the traffic stop. As mentioned earlier, Trooper Ramsey testified that he noticed the Texas license plate when he pulled behind the van, and he then asked for a check on the tag and learned that there was no such registration. In *Travis v. State*, *id.*, our supreme court found probable cause for a traffic stop even though an officer acted upon his erroneous belief that a

Texas license plate must display an expiration sticker as is required for Arkansas tags under our state law. Similarly, Ramsey had probable cause to believe that driving a vehicle with an unregistered Texas license plate was a traffic violation. Thus, we hold that Trooper Ramsey had probable cause to stop the van in order to ascertain the validity of its registration.

2) *Whether Trooper Ramsey violated Laime and Dodd's Fourth Amendment rights by continuing to detain them after concluding his investigation of the traffic violation*

Appellants note Ramsey's testimony that he decided to search their van after learning that the license was valid. They contend that at this point there was no reason to further detain the van or the passengers, and that they should have been free to go. We agree.

Given the lawfulness of the initial stop, the question is whether the resulting detention was "reasonably related in scope to the circumstances which justified the interference in the first place." *Burris v. State*, 330 Ark. 66, 954 S.W.2d 209 (1997) (quoting *Terry v. Ohio*, 392 U.S. 1 1968)). On this issue, the case of *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998), is instructive.

The *Beck* court reversed the trial court's denial of a motion to suppress evidence that had been seized when the defendant's rented Buick was searched after a valid traffic stop. Officer Joe Taylor of the Conway, Arkansas, Police Department made the stop and gave Beck a verbal warning

for following another car too closely. Taylor told Beck that he was free to go, inquired whether he had any weapons or drugs, asked to conduct a quick search of the car, and, in Beck's presence, radioed a canine officer for assistance. Beck, who had remained in the car and had responded that he did not have weapons or drugs, asked what would happen if he refused to consent to the search. Taylor said that no search would occur, but that a drug dog would be led around the outside of the car. Beck refused to consent to the search. When the canine officer arrived, Taylor motioned him to get the dog out and instructed Beck to stand to the side of the car, which Beck did. The dog was led around the automobile, and it alerted to a rear passenger door on the passenger side. Taylor informed Beck of his *Miranda* rights, and Beck told the officers that he had an illegal substance in his briefcase. A search of the briefcase revealed a residue that later tested positive for methamphetamine. Beck was subsequently placed under arrest, and a small amount of methamphetamine was found pursuant to a search of his person.

The *Beck* court found no reasonable, articulable suspicion before the search was conducted that Beck's car was carrying contraband or that other criminal activity may have been afoot. The court held that asking Beck to step from his motor vehicle in order to await a drug-dog sniff of his automobile, after the completion of a valid stop for a traffic violation, constituted a seizure within the purview of the Fourth Amendment. Citing *U.S. v. Terry*, *supra*, the court stated that Beck's renewed detention after completion of the initial traffic stop could occur only if events that had transpired during the stop gave rise to a reasonable suspicion that justified further detention, and it rejected the

government's contention that reasonable suspicion for the renewed detention arose from seven circumstances. The seven factors were as follows: (1) Beck was driving a car rented by an absent third party; (2) the car was licensed in California; (3) there was fast-food trash on the passenger side floorboard; (4) there was no visible luggage in the passenger compartment of the automobile; (5) Beck exhibited a nervous demeanor; (6) Beck was traveling from a drug source state to a drug demand state; and (7) Officer Taylor did not believe Beck's explanation, given the number of employment opportunities that lay between California and North Carolina, that he was driving across the country to procure employment. *See Beck*, *supra*. The *Beck* court discussed each circumstance as consistent with innocence or as generating suspicion of criminal activity; it found that reasonable suspicion for Beck's renewed detention arose from none of the circumstances, individually or in combination.

The State argues that the facts of the present case support, more strongly than *Beck*, Officer Ramsey's reasonable suspicion (1) because Laime and Dodd were unable to say whom they were meeting for diner and at what restaurant; (2) because Laime and Dodd both told Ramsey that the van was borrowed, while the registration papers for it showed Dodd to be its owner; (3) because Laime stated that he had a traffic violation, but he failed to reveal drug violations, disorderly conduct, and obstruction charges; (4) because, unlike in *Beck*, Dodd's consumption of food and drink was inconsistent with Laime's contention that appellants were meeting someone for dinner within fifteen minutes; and (5) because Laime's demeanor was irate, hostile, combative, demanding, disorderly, and belligerent.

As to the first factor, we find nothing about a driver's inability or unwillingness, during a traffic stop, to reveal to a state trooper with whom and where he is having dinner later that evening as giving rise to a suspicion that illegal activity has occurred, is occurring, or is about to occur.

The second factor alleged by the State to justify a basis for suspicion of criminal activity is the contrast between Laime's statement that the van was borrowed from a friend in Texas and the registration papers that showed Jeanna Dodd of Fort Sam Houston, Texas to be the owner of the van. However, as already discussed, Ramsey testified that he had already made his decision to search the van before he ever talked to Dodd and before he had any knowledge that the owner of the van was, in fact, its passenger. Ramsey's only knowledge regarding ownership of the van at the time he made his decision to search it was that it was owned by a friend of Laime's who lived in Texas, and that the owner was a Texas woman named Jeanna Dodd.

Regarding the third factor, the State argues "that [Laime] did not reveal, although given the opportunity, that he been [sic] arrested in Florida for a drug violation and charged in Virginia for a drug violation, disorderly conduct and obstruction." The State's characterization of Laime's "opportunity" to reveal his past record is disingenuous. Even considered in the light most favorable to the State, the most we can discern from Trooper Ramsey's testimony regarding Laime's "opportunity" is that, while writing out a traffic citation, he asked Laime "if he'd ever been arrested or had any type of history," and Laime responded that he had received a "speeding ticket or some kind of driving offense

a couple of years back." Considering that Ramsey's inquiry was made while he was writing out a citation during the course of a traffic stop relating to an offense of impeding traffic and to questions about the registration of the motor vehicle Laime was driving, it is not illogical that Laime would interpret Ramsey's inquiry as being limited to whether he had been arrested or had a history of other traffic offenses. We do not believe that Ramsey's ambiguous inquiry could have been reasonably viewed by Laime as presenting him with the "opportunity" to reveal his entire criminal history, particularly where, under these circumstances, Ramsey had no right to inquire about Laime's criminal history, and Laime had no obligation to reveal such information.

Regarding the fourth factor, we find nothing that is inconsistent with innocent behavior about a traveler's consumption of a snack shortly before dinner.

Finally, regarding Laime's demeanor, we note Ramsey's testimony that Laime would not give him a chance to explain anything, and that Laime was in a hurry to meet people in Little Rock to catch a ride to Washington, D.C. Just as the government's reliance on nervousness as a basis for reasonable suspicion must be treated with caution, *Beck, supra*, (citing *United States v. Fernandez*, 18 F.3d 874 (10th Cir. 1994)), we think that the State's reliance on Laime's escalating demeanor as a basis for reasonable suspicion is misplaced. We view Laime's demeanor—even if accurately described by Ramsey as irate, hostile, combative, demanding, and disorderly—as consistent with Laime's expressed need to get to Little Rock in short order and with his justifiable protests of his unreasonable detention by Ramsey. The State's

brief refers to Ramsey's need for additional officers "out of concern for his own safety," but our review of the testimony to which the State refers reveals no such concern expressed by him.

In sum, the point at which the initial traffic stop was completed was when Laime gave Trooper Ramsey proper registration papers for the van. Under the circumstances of this case, Ramsey could not have formed a reasonable suspicion that criminal activity was afoot from knowing that the van was registered to someone in Texas named Jeanna Dodd, from Laime's failure to specify details about the trip or previous violations in other states, or from Laime's agitated and hostile behavior. Therefore, the renewed detention of the van, its driver, and its passenger exceeded the valid reason for the initial stop and violated the Fourth Amendment. The subsequent search of the vehicle was an unconstitutional search, and the drugs and drug paraphernalia discovered were fruit of the poisonous tree. The trial court's denial of appellants' motions to suppress should have been granted. In light of this holding, we need not address the third point, that omissions of facts in Ramsey's affidavit for search warrant undermined the drug dog's reliability and amounted to a *Franks* violation; or the fourth point, that the search warrant was objectively unreasonable and that there was no basis for a nighttime search.

Reversed and remanded.

Hart, Robbins, and Neal, JJ., agree.

Griffen, J., concurs; Stroud, C.J., dissents.

Wendell L. Griffen, Judge, concurring.

I agree that Trooper Ramsey violated appellants' Fourth Amendment rights by detaining them after he determined that the Texas registration of Dodd's van was valid. However, I write separately to state in the clearest terms that assertion of one's constitutional rights, even if asserted with rudeness, does not automatically provide a police officer with reasonable suspicion to conduct a warrantless search. The United States Supreme Court has held that a suspect's mere assertion of constitutional rights cannot constitute the sole basis for establishing probable cause to conduct a search. *See Florida v. Bostick*, 501 U.S. 429 (1991). *See also United States v. Hyppolite*, 65 F.3d 1151 (4th Cir. 1995) (holding that the mere assertion of constitutional right to refuse consent to search does not supply probable cause to search), *cert. denied*, 517 U.S. 1162 (1996); *Snow v. State*, 84 Md. App. 243, 578 A.2d 816 (1990) (holding the driver's refusal to consent to search of automobile did not give rise to reasonable suspicion that vehicle contained narcotics).

In this case, after Ramsey determined that the registration on Dodd's van was valid, Ramsey then began questioning appellants regarding Dodd's identity and why they were traveling to Little Rock. When their answers did not satisfy Ramsey, he then produced a consent form and asked Laime

if he knew what it was. Laime responded, "You're not going to look." Nonetheless, Ramsey proceeded to fill out the top part of the consent form and Laime repeated, "You're not going to look." Ramsey attempted to read the consent form to Laime, who for the third time stated, "You're not going to look." When Ramsey informed Laime that he was going to use the drug dog to sniff the van, Ramsey said that Laime "went ballistic" and responded, "You're not going to do it." He also said, "You are violating my constitutional rights. Either arrest me or let me go." Laime repeated these protests as Ramsey ran the drug dog around the van and when he conducted the search of the interior of the van.

Ramsey testified that Laime's attitude changed from "irate" to "bad combative" when he tried to read the consent form to him, and the State argues that appellant's escalating demeanor provided Ramsey with reasonable suspicion to conduct the warrantless search of the van. We have rejected this argument, noting that nervousness as a basis for reasonable suspicion must be treated with caution. Laime's conduct was consistent with his expressed need to get to Little Rock in short order.

However, Laime's behavior was also consistent with a person who was forced to repeatedly assert his Fourth Amendment right to withhold his consent to have the vehicle searched without a warrant and whose right to do so was being violated. Laime had every right to withhold consent to a warrantless search of the vehicle. Ramsey had no warrant and lacked reasonable suspicion to effect a warrantless search. He plainly was unjustified in insisting that Laime consent to a warrantless search.

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Finally, I write to declare my profound disappointment and displeasure with regard to the cavalier, if not callous, disregard that Ramsey's conduct manifested for an individual's right to withhold consent from governmental infringement on his personal liberty and privacy. It has often been stated that the Fourth Amendment protects the right to be left alone. Laime repeatedly asserted that right during the encounter with Ramsey.

Moreover, one's frustration, resentment, or even anger in the face of the blatant disregard of the right to be left alone does not suggest criminal conduct. The police are sworn to protect life and liberty, including the liberty to say no to the police. Otherwise, the Fourth Amendment right to be free from unreasonable searches and seizures will mean only what police officers like Ramsey want. That is not liberty; it is the essence of a police state.

John F. Stroud, Jr., Chief Judge, dissenting.

I agree with the majority that the police officer had probable cause to stop the van in order to ascertain the validity of its registration, and that, consequently, the initial stop was valid. I do not agree, however, that the officer's continued detention of the vehicle and its occupants exceeded the valid reason for the initial stop, thereby making the subsequent search unconstitutional. I therefore respectfully dissent and would affirm the convictions.

When reviewing a trial court's ruling on a motion to suppress, we make an independent determination based on the totality of the circumstances and reverse only if the trial

court's ruling was clearly against the preponderance of the evidence. *Embry v. State*, 70 Ark. App. 122, 15 S.W.3d 367 (2000). The majority relies upon *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998). I, too, find that *Beck* is instructive. As explained by the Eighth Circuit Court of Appeals:

> During an investigative stop, officers may check for weapons and may take any additional steps "reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop." *United States v. Hensley*, 469 U.S. 221, 235 (1985); *see also United States v. Dawdy*, 46 F.3d 1427, 1430 (8th Cir.) (holding that requests for identification of all occupants, explanation of presence in area, and warrant check was within reasonable scope of detention), *cert. denied*, 516 U.S. 872 (1995); *United States v. White*, 42 F.3d 457, 459 (8th Cir. 1994) (holding that request for license, destination, and purpose of trip within reasonable scope of detention); *United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994) (concluding that license and vehicle registration checks were reasonable), *cert. denied*, 514 U.S. 1134 (1995).
>
> . . . .
>
> Nonetheless, *unless [the police officer has] a reasonably articulable suspicion for believing that criminal activity was afoot*, continued detention of Beck became unreasonable after he had finished processing Beck's traffic violation. *See United*

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States v. Mesa, 62 F.3d 159, 162 (6th Cir. 1995) ("Once the purposes of the initial traffic stop were completed, there is no doubt that the officer could not further detain the vehicle or its occupants *unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention.*").

. . . .

Because the purposes of Officer Taylor's initial traffic stop of Beck had been completed by this point, Officer Taylor could not subsequently detain Beck *unless events that transpired during the traffic stop gave rise to reasonable suspicion to justify Officer Taylor's renewed detention of Beck*. . . . Thus, we must consider whether Officer Taylor had a reasonable, articulable suspicion that Beck's Buick was carrying contraband or that other criminal activity may have been afoot. . . . " 'Whether the particular facts known to the officer amount to an objective and particularized basis for a reasonable suspicion of criminal activity is determined in light of the totality of the circumstances.' "

. . . .

This court has summarized the standards used to consider whether reasonable suspicion exists as follows:

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> The standard of articulable justification required by the fourth amendment for an investigative, *Terry*-type seizure is whether the police officers were aware of "particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant[ed] suspicion that a crime [was] being committed." . . . In assessing whether the requisite degree of suspicion exists, we must determine whether the facts collectively establish reasonable suspicion, not whether each particular fact establishes reasonable suspicion. "[T]he totality of the circumstances—the whole picture—must be taken into account." . . . We may consider any added meaning certain conduct might suggest to experienced officers trained in the arts of observation and crime detection and acquainted with operating modes of criminals. . . . It is not necessary that the behavior on which reasonable suspicion is grounded be susceptible only to an interpretation of guilt, . . . ; however, the officers must be acting on facts directly relating to the suspect or the suspect's conduct and not just on a "hunch" or on circumstances which "describe a very broad category of predominantly innocent travelers."

140 F.3d at 1134-1136 (emphasis added) (citations omitted). Contrary to the conclusion reached by the majority in the instant case, I have concluded that, in viewing the totality of the circumstances, "something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention."

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Here, when the officer checked the Texas license tags, they did not show that the car was registered, providing the basis for the initial stop. When he asked the driver, Laime, for his driver's license, Laime gave him an ID card from Virginia. The officer asked him why the van had Texas tags if he was from Virginia, and Laime told him that the van belonged to a friend in Texas. Laime also told him that he and the other occupant of the vehicle were heading to Little Rock to meet some friends for supper and that those friends were going to take him to Washington. He said that his female passenger [appellant Jeanna Dodd] would then take the van back to Texas.

The officer then asked for registration or insurance papers and he was given insurance papers made out to "Jeanna Dodd" with a "Subaru" listed as the insured vehicle rather than the Dodge van that Laime was driving. At that point the officer did not know who "Jeanna Dodd" was. The officer then went back to his patrol car to check the Virginia ID and to run the Texas tags again. The tags still came back with no registration information.

The officer then went back to the van and asked the driver, Laime, to return to the patrol car with him because he had some questions. When Laime came to the patrol car, he had the Texas registration papers on the van. Those papers showed that the van was registered to "Jeanna Dodd," the same name shown on the insurance papers. The papers showed that the van had been registered in Ft. Sam Houston at 12:30 p.m. that afternoon.

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It is at this point that the majority maintains the detention should have ended, whereas I think the officer's suspicions were still reasonable because the computer was not showing the car as registered, and it would be implausible if not impossible to register a vehicle at Ft. Sam Houston/San Antonio, Texas, at 12:30 p.m. and be near Benton, Arkansas before 6:00 p.m. on the same afternoon. He produced nothing but registration papers and insurance papers in the name of a person, "Jeanna Dodd," that was not the driver and that had not yet been identified as the female passenger.

Moreover, when the officer asked Laime where they were going to eat, he responded that he could not remember the name, but that his sister would know. The officer then went to talk to the female passenger. She also stated that they were brother and sister, that she lived in Texas and he in Washington, and that they were going to Little Rock to eat supper with friends that were going to take him back to Washington. When the officer asked her where they were going to eat, "She couldn't remember the address or whether it was Arby's or Wendy's or any other place like that." Neither could she tell him the names of the people they were to meet. I think the officer's continued suspicions remained reasonable at this point as well.

The officer then returned to his patrol car to talk to Laime and to have Hot Springs run a criminal-history check on him. He asked Laime if he had any arrests and Laime responded that he had a driving offense a couple of years ago. The officer described Laime as becoming irate, combative, and hostile, and that at some point he called for other officers. The officer then returned to the van to talk to the passenger [Dodd] again.

He asked her for identification, and it was at that point that he learned that she was "Jeanna Dodd," the person in whose name the van was registered. Yet both she and Laime had previously told him that the van belonged to a friend in Texas.

In short, I find that these facts are distinguishable from those presented in *Beck, supra.* Laime and Dodd both seemed to be trying to avoid full identification of themselves and the ownership of the vehicle, neither could remember where they were meeting the people in Little Rock, and Dodd could not remember the names of the people they were meeting. Based on the totality of these circumstances, I think the officer had sufficient reasons for further detaining appellants even after being furnished Texas registration papers. Consequently, I would find that the trial court's denial of the motion to suppress was not clearly erroneous.

The majority opinion does not address the remaining points of appeal, and neither do I, other than to say that I do not find reversible error with respect to either of them.

APPENDIX C — ORDER OF THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS DENYING MOTION TO SUPPRESS EVIDENCE DATED AND FILED FEBRUARY 2, 2000

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

DAVID LAIME and JEANNA DODD

DEFENDANTS

ORDER DENYING MOTION TO SUPPRESS EVIDENCE

Having heard the testimony, examined the briefs and considered the arguments of counsel, the Court hereby denies the various motions to suppress evidence, including amendments, supplements and briefs filed by the defendants in this case.

IT IS SO ORDERED.

s/ Grisham A. Phillips
CIRCUIT JUDGE

2-2-00
Date